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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,618	08/27/2003	Gregg Lance Lehmberg	F6175(C)	4373

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EXAMINER	
WEIER, ANTHONY J	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/648,618	LEHMBERG ET AL.	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 October 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18, 21, and 22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18,21 and 22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 21 and 22 are indefinite in that it is not clear what is meant by said aroma compound additive being "carried". More specifically, it is not clear whether this refers to physically carrying or whether the aroma is "carried" as in being preserved during storage or being effective in the final beverage once produced. And if referring to physical carrying of same, does this mean said additive is carried by the soluble/infusible coffee (e.g. as in the cases where same is spray dried on coffee particles) or carried as in a package regardless of attachment to other ingredients.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 10-12, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 560609 (see Abstract).

The claims are rejected for the reasons set forth in the last Office Action.

EP 560609 further discloses the use of approximately 1 gm of soluble coffee powder carrying, for example, 1.5% aroma additive (the coffee oil dispersion) in 99 gms

of water (e.g. about 3.5 ounces). This means that 2 grams of soluble coffee containing said aroma additive is required in 7 ounces of water, said 2 grams being considered within the dose that may be used conventionally as called for in the instant claims (e.g. 1.4-2.4 g coffee particulates per 6-8 ounces of water). Of course, the 2 grams material used in solution is made up of 1.5% aroma compound, thus a reduction in the level of the soluble coffee that may be used by 1.5% which is approximately 1.97 grams of soluble coffee.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-18, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19919711.

The claims stand rejected for the reasons set forth in the last Office Action with the addition of the following.

DE 19919711 discloses carrying of the coffee and aroma additive in packaging.

DE 19919711 does not disclose the particular amounts of infusible or water soluble material as called for in the instant claims. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived

at same depending on the strength of aroma desired in the precursor and, therefore, subsequent beverage.

5. Claims 1-3, 10-12, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 560609, Stoecklie et al, EP 011324, EP 001460, or Soughan.

The claims stand rejected for the reasons set forth in the last Office Action and the following.

Each reference discloses a mixture of coffee and aroma additive wherein said additive is either carried by coating/absorbed in some manner on the coffee itself and/or via the composition being held in a package.

6. Claims 1-18, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al.

The claims stand rejected for the reasons set forth in the last Office Action and the following.

Johnson et al further discloses said coffee solid carrying the aroma additive as same is coated on the solid.

Response to Arguments

7. Applicant's arguments filed 10/18/06 have been fully considered but they are not persuasive.

Applicant argues that the precursor is superior. However, it is expected that the flavor attributed to any drop in water soluble material (e.g. tea) and the flavor attributed to same may be met by adding an aroma additive to such degree as to make up for any loss in flavor. It is not clear whether the invention provides unexpected results

regarding other attributes of the precursor or end product (once the beverage is created). The particular amount of aroma agent added to the soluble or infusible tea or coffee is seen as nothing more than a matter of preference depending on the particular flavor desired and degree of flavoring. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have achieved such amounts as called for in the instant claims as a matter of preference depending on such desired flavor and/or desired degree/strength of such flavor.

All other arguments have been addressed in view of the rejections as set forth above.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

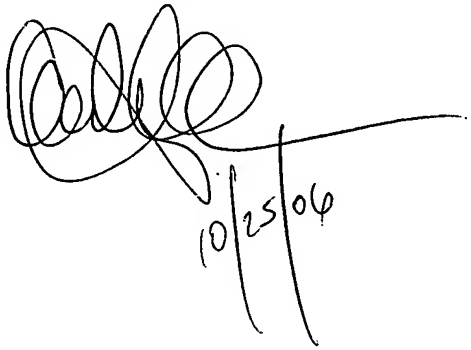
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1761



Anthony Weier
October 25, 2006